In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 332

FENELON B. BOESCHE, Administrator
OF THE ESTATE OF F. W. BOESCHE, Deceased,
PETITIONER

v.

STEWART L. UDALL, Secretary of the Interior

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The government does not oppose the granting of the writ of certiorari in this case. We acknowledge that the decision of the court of appeals here is squarely in conflict with the decision of the Tenth Circuit in *Pan American Petroleum Corp.* v. *Pierson*, 284 F. 2d 649, certiorari denied, 366 U.S. 936, which held that a mineral lease cannot be cancelled, in the absence of an express statutory cancellation provision, except in a suit brought by the Attorney General in an appropriate district court. And, as we explained in

our petition for certiorari in the *Pan American* case, the issue is one of great importance in the administration of the public domain by the Department of the Interior.

Under Rev. Stat. 441, as amended, 5 U.S.C. 485, the administration of oil and gas on the public domain constitutes a major program of the Department of the Interior. Each year thousands of leases are issued. On June 30, 1960, there were outstanding 139,000 leases supervised by the Department of the Interior under the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. 181, *et seq.*, which covered 113,000,000 acres. The total number of outstanding leases supervised by the Department under all programs—public lands, acquired lands, Indian, Naval Petroleum Reserve, and Outer Continental Shelf—was 159,000, covering 125,000,000 acres. Because of the size of this program, mistakes in its administration unavoidably occur which require that leases valid on their face be cancelled administratively for reasons existing prior to the issuance of the leases. Thus, in the three-year period ending June 30, 1960, there were 1,129 administrative cancellations out of the total of 54,000 leases issued during that period. While no statistics are available for the period subsequent to June 30, 1960, the Department of the Interior advises us that the annual volume of leases and cancellations has not significantly altered in the last two years.

The Tenth Circuit's decision in the *Pan American* case, with which the decision below is in conflict, seriously jeopardized the authority of the Department of the Interior to continue supervising the leasing pro-

gram. In *Mitchell* v. *Best*, Civil No. 8244, now pending in the United States District Court for the Northern District of California, plaintiff has invoked the authority of *Pan American* in an attempt to contest the administrative cancellation of an oil and gas lease under the Mineral Leasing Act of 1920. Furthermore, there is serious possibility that the reasoning in the Tenth Circuit opinion will be argued to be applicable to cases involving Taylor Grazing Act permits, transmission line easements and all the other myriad of instances when the United States retains fee title, a reversion, or some other interest which must be administered by the Department of the Interior. The consequences of shifting to the courts the exclusive power of cancellation which has heretofore been exercised by the Secretary in all these instances are obvious both from the standpoint of effective and prompt administration and with respect to the workload of the federal courts.

Accordingly, we submit that the issue of the Secretary's authority in this area should be definitively resolved by this Court, and, to that end, the petition for certiorari here should be granted.

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